

SENATE BILL NO. 20

INTRODUCED BY ROUSH

A BILL FOR AN ACT ENTITLED: "AN ACT REMOVING THE REQUIREMENT THAT A MUNICIPALITY DIVERT ITS WATER FROM AN A-CLOSED WATER BODY IN ORDER TO QUALIFY FOR THE CONSIDERATION FOR NONABANDONMENT OF A MUNICIPAL WATER RIGHT; INCLUDING A MUNICIPAL WATER SUPPLY THAT IS GOING TO BE USED ~~IN CONJUNCTION WITH A REGIONAL WATER SUPPLY~~ AS APPROVED BY THE DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION AS A CRITERION FOR DETERMINING NONABANDONMENT; AND AMENDING SECTION 85-2-227, MCA."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 85-2-227, MCA, is amended to read:

"85-2-227. Claim to constitute prima facie evidence -- relevant evidence -- abandonment -- criteria for presumption of municipal nonabandonment. (1) For purposes of adjudicating rights pursuant to this part, a claim of an existing right filed in accordance with 85-2-221 or an amended claim of existing right constitutes prima facie proof of its content until the issuance of a final decree. For purposes of administering water rights, the provisions of a temporary preliminary decree or a preliminary decree, as modified after objections and hearings, supersede a claim of existing right until a final decree is issued.

(2) A water judge may consider all relevant evidence in the determination and interpretation of existing water rights. Relevant evidence under this part may include admissible evidence arising before or after July 1, 1973.

(3) Subject to the provisions of subsection (4), a water judge may determine all or part of an existing water right to be abandoned based on a consideration of all admissible evidence that is relevant, including, without limitation, evidence relating to acts or intent occurring in whole or in part after July 1, 1973.

(4) In a determination of abandonment made under subsection (3), the legislature finds that a water right that is claimed for municipal use ~~from a water classified by the board of environmental review before January 1, 1999, as A-Closed under administrative rule is a unique water suited to municipal water use and that such a claim~~ by a city, town, or other public or private entity that operates a public water supply system, as defined in 75-6-102, is presumed to not be abandoned if the city, town, or other private or public entity has used any part

1 of the water right or municipal water supply and there is admissible evidence that the city, town, or other public
2 or private entity also has:

3 (a) obtained a filtration waiver under the federal Safe Drinking Water Act, 42 U.S.C. 300(f), et seq.;

4 (b) acquired, constructed, or regularly maintained diversion or conveyance structures for the future
5 municipal use of the water right;

6 (c) conducted a formal study, prepared by a registered professional engineer or qualified consulting firm,
7 that includes a specific assessment that using the water right for municipal supply is feasible and that the amount
8 of the water right is reasonable for foreseeable future needs; or

9 (d) maintained facilities connected to the municipal water supply system to apply the water right to:

10 (i) an emergency municipal water supply; or

11 (ii) a supplemental municipal water supply; or

12 ~~(iii) a municipal water supply to be used in conjunction with a water supply provided by a regional water~~
13 ~~authority system.~~

14 (III) ANY OTHER USE APPROVED BY THE DEPARTMENT UNDER TITLE 85, CHAPTER 2, PART 4."

15 - END -